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IN THE
COURT OF APPEALS OF INDIANA

JULIE A. GARDINER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 08A02-0708-CR-739
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CARROLL CIRCUIT COURT
The Honorable Donald E. Currie, Judge
Cause No. 08C01-0603-FA-10

April 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Julie A. Gardiner ("Gardiner") appeals her conviction and sentence for Dealing in Methamphetamine, as a Class A felony.[1] We affirm.

Issues

Gardiner presents four issues for review, which we consolidate and restate as the following three issues:

I. Whether the State presented sufficient evidence to support her conviction;

II. Whether the trial court committed fundamental error in instructing the jury; and

III. Whether she was properly sentenced.

Facts and Procedural History

On January 28, 2006, a confidential informant purchased methamphetamine from Gardiner and delivered it to a Carroll County Sheriff's Department deputy. The transaction took place at Gardiner's residence, which is located across the highway from a park.

On March 9, 2006, the State charged Gardiner with dealing in methamphetamine within 1000 feet of a public park. Gardiner was tried before a jury on June 11 and 12, 2007 and was found guilty as charged. On July 23, 2007, Gardiner was sentenced to thirty years imprisonment, with ten years suspended to probation. She now appeals.

[1] Ind. Code § 35-48-4-1.1.

Discussion and Decision

I. Sufficiency of the Evidence

Indiana Code Section 35-48-4-1.1(a)(1)(C) provides in relevant part: "a person who knowingly or intentionally delivers methamphetamine, pure or adulterated, commits dealing in methamphetamine, a Class B felony, except as provided in subsection (b)." Subsection (b)(3)(B)(ii) provides in relevant part: "The offense is a Class A felony if the person delivered the drug in, on, or within one thousand (1,000) feet of a public park."

The State charged Gardiner with violating Indiana Code Section 35-48-4-1.1 "in that Julie A. Gardiner did knowingly deliver Methamphetamine within one thousand (1000) feet of a public park, to-wit: Delphi City Park." (App. 34.) Gardiner contends that the State failed to prove the element elevating the offense from a Class B felony to a Class A felony, i.e., that the sale took place within 1000 feet of a park. She points to an absence of evidence establishing what entity operated the park near her home.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and the reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). In so doing, we do not assess witness credibility or reweigh the evidence. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

At Gardiner's trial, the confidential informant testified that he purchased methamphetamine from Gardiner at her residence, and also testified that a park was located

"directly across from her house." (Tr. 61.) Detective Kevin Hammond testified that "the Delphi City Park is across the highway" from Gardiner's home. (Tr. 171.) After Detective Hammond verified that a photograph of a sign reading "City Park" depicted the park under discussion, the State offered the photograph into evidence as State's Exhibit 6. Detective Hammond then testified that he and an assistant measured "from the middle of [Gardiner's] driveway" to the first equipment in the park and that the distance was 454 feet. (Tr. 173.) The distance "from the edge of her garage to the road was approximately another 30 feet." (Tr. 175.)

Pursuant to Indiana Code Section 35-48-4-1.1 and the charging information, the State was required to establish that Gardiner delivered methamphetamine within 1,000 feet of a public park known as Delphi City Park. The State was not required, as Gardiner suggests, to prove whether the City of Delphi owned the park or instead merely operated a park owned by another entity. The State presented sufficient evidence to permit the fact-finder to conclude that the methamphetamine transaction took place within 1,000 feet of a public park, as required for elevation of the offense to a Class A felony.

II. Jury Instruction

Final Instruction No. 1 advised the jury as follows:

> Under the Constitution of Indiana you have the right to determine both the law and the facts. The Court's instructions are your best source in determining the law.

(Tr. 212.) Final Instruction No. 12 provided in relevant part as follows:

> You are the exclusive judges of the evidence, which may be either witness testimony or exhibits.

(Tr. 217.) Gardiner contends that neither instruction adequately informed the jury of their role as "exclusive judges of all questions of fact." Appellant's Brief at 21. Gardiner did not object to the foregoing instructions or tender an alternative instruction. Indiana Trial Rule 51(C) provides in relevant part: "No party may claim as error the giving of an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection." Accordingly, Gardiner's criticism of Final Instructions Nos. 1 and 12 presents no issue for appellate review.

Gardiner also contends that Final Instruction No. 6 was inadequate. The instruction defined "public park" and "park purposes" but did not define "political subdivision." Again, Gardiner did not object to the instruction or tender an alternative instruction. She attempts to circumvent waiver by arguing fundamental error.

A fundamental error is a blatant violation of the basic principles of due process that renders the trial unfair to the defendant. Ortiz v. State, 766 N.E.2d 370, 374 (Ind. 2002). The error must be so prejudicial to the defendant's rights as to make a fair trial impossible. Id.

To support the elevation of Gardiner's offense, pursuant to Indiana Code Section 35-48-4-1.1 and the charging information, the jury was required to find that Gardiner delivered methamphetamine within 1,000 feet of a "public park." Final Instruction No. 6 defined the statutory phrase "public park" as "any property operated by a political subdivision for park purposes." (App. 29.) Thus, the trial court defined the criteria necessary to support the

offense elevation. The omission of further definitions did not deprive Gardiner of a fair trial so as to constitute fundamental error.

III. Sentencing

Gardiner presents two sentencing challenges. First, she claims that the trial court failed to make a reasonably detailed statement of the reasons for imposing her advisory sentence.[2] Second, she seeks review of the trial court's determination that twenty years of the sentence was non-suspendable due to a prior felony conviction.

In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (Ind. 2007), our Supreme Court determined that trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Id. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. So long as it is within the statutory range, a sentencing decision is subject to review on appeal for an abuse of discretion. Id. One way in which a trial court may abuse its discretion is to fail to enter a sentencing statement at all. Id. Another is to enter a sentencing statement that explains reasons for imposing a sentence and the record does not support the reasons, the statement omits reasons clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-

[2] Indiana Code Section 35-50-2-4 provides that a person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years. Thus,

91.

Here, the trial court stated that it had "considered the written presentence investigation report and the criteria for sentencing as set forth in Indiana Code 35-38-1-7.1." (Tr. 73.) After describing the terms and conditions of probation, the trial court concluded, "I believe the minimum sentence is nonsuspendable. The court's neither going to mitigate nor aggravate the sentence, but will impose the advisory sentence of thirty years[.]" (Tr. 76-77.)

Sentencing statements are not required to contain a finding of aggravators or mitigators; rather, they need include only a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." Anglemyer, 868 N.E.2d at 490. In this case, the trial court's limited recitation reveals the circumstances considered (the PSI and statutory criteria) and the trial court's conclusion that there existed no mitigators or aggravators significant enough to cause the trial court to deviate from the legislatively-determined advisory sentence. We need not remand for a more detailed sentencing statement.

Indiana Code Section 35-50-2-2 provides that the trial court may suspend any part of a sentence for a felony, except as provided by statute. One statutory exception to sentence suspension beyond the minimum term of years (twenty years in this case) is that "the crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction." Ind. Code § 35-50-2-2(b)(1).

On February 10, 2005, Gardiner was charged with Possession of Chemical Precursors with Intent to Manufacture Controlled Substances, a Class D felony.[3] On March 9, 2006, she

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Gardiner received the advisory sentence, with ten years suspended to probation.

[3] Ind. Code § 35-48-4-14.5.

was charged with the instant offense. On March 2, 2007, she was sentenced to one year of imprisonment, all suspended, on the possession conviction. Gardiner claims that the prior felony conviction may be reduced to a Class A misdemeanor upon her successful completion of probation. The Presentence Investigation Report contains the notation "Upon the successful completion of probation, without violation, state would not object to a sentence modification." (Supp. App. 4.) We decline to speculate upon the possibility of a future sentence modification. On June 12, 2007, when Gardiner was convicted in the instant case, Gardiner had previously been convicted of and sentenced for a felony.

Gardiner urges that we find the possession conviction not to be a "prior" conviction because she had not been sentenced on that offense before the commission of the instant offense. However, this Court has considered that argument and rejected it. See Woodward v. State, 798 N.E.2d 260, 264 (Ind. Ct. App. 2003) (concluding that "prior unrelated convictions, as used in I.C. § 35-50-2-2(b)(4)(Q), does not impose a sequential requirement concerning the dates of commission and conviction relative to the predicate offenses, except that those convictions must be entered before judgment was entered on the instant offense"), trans. denied; State v. Thomas, 827 N.E.2d 577, 581 n.3 (Ind. Ct. App. 2005) (observing that "prior unrelated convictions within the meaning of the General Suspension Statute [Ind. Code § 35-50-2-2] refers to offenses that were committed before the instant offense and were reduced to judgment before the instant conviction was entered.") Because the instant offense is a Class A felony, and Gardiner had a prior unrelated felony, the trial court did not err in finding the minimum sentence of twenty years to be non-suspendable.

Conclusion

There is sufficient evidence to support Gardiner's conviction for Dealing in Methamphetamine as a Class A felony. Gardiner did not demonstrate fundamental error in jury instruction, nor did she demonstrate sentencing error.

Affirmed.

NAJAM, J., and CRONE, J., concur.